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SOMPO JAPAN INSURANCE COMPANY OF AMERICA

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

SOMPO JAPAN INSURANCE
COMPANY OF AMERICA,

Plaintiff,

vs.

ORIENT OVERSEAS CONTAINER
LINE, LTD.; DYNAMIC
WORLDWIDE LOGISTICS, INC.; and
DOES 1 through 10, inclusive,

Defendants.

Case No.:

**COMPLAINT FOR DAMAGE TO
CARGO; NEGLIGENCE; BREACH
OF CONTRACT; DECLARATORY
RELIEF**

Plaintiff alleges:

JURISDICTIONAL ALLEGATIONS

1. This dispute involves an international, intermodal, import shipment of Cargo and thus, is a case in admiralty giving rise to the court's jurisdiction pursuant to 28 U.S.C. §1333(1) and Rule 9(h) of the Federal Rules of Civil Procedure, as hereinafter more fully appears.

2. The case is governed by federal law, including the United States Carriage of Goods by Sea Act, 49 U.S.C. §1301 et. seq. and 28 U.S.C. 1367.

GENERAL ALLEGATIONS

3. At all times material herein, Plaintiff SOMPO JAPAN INSURANCE COMPANY OF AMERICA, (hereinafter "SOMPO") is an insurance corporation

1 with a place of business at 11405 N. Community House Road, Suite 500,
2 Charlotte, North Carolina 28277-1502 and was the liability insurer of Nissin
3 International Transport U.S.A., Inc. ("NISSIN").

4 4. NISSIN acted as a non-vessel operating common carrier in agreeing to
5 move the below described Cargo from Vietnam to Chicago, Illinois via Los
6 Angeles and to the order of American Mitsuba Corporation.

7 5. NISSIN engaged Defendant ORIENT OVERSEAS CONTAINER
8 LINE, LTD. (hereinafter "OOCL") to move the Cargo from Vietnam to Chicago
9 via Los Angeles.

10 6. At all times material herein, Defendant ORIENT OVERSEAS
11 CONTAINER LINE, LTD. (hereinafter "OOCL"), was a foreign corporation
12 organized and existing under the laws of Hong Kong engaged in business as a
13 common carrier of goods for hire between various foreign ports and ports in
14 California and authorized to do business in California with a United States
15 headquarters at 10913 South River Front Parkway, #200, South Jordan, UT 84095
16 and principal place of business in the United States at 17777 Center Drive Dr., Ste.
17 500, Cerritos, CA 90703.

18 7. At all times material herein, Defendant DYNAMIC WORLDWIDE
19 LOGISTICS, INC. ("DYNAMIC") was a foreign corporation engaged in business
20 as a non-vessel operating common carrier of goods for hire between various ports
21 and ports in California and authorized to do business in California with an office
22 and place of business at 14141 Alondra Blvd., Santa Fe Springs, CA 90670.

23 8. Plaintiff has no knowledge of the true names and capacities of
24 Defendants sued herein as Does 1 through 10 inclusive, except that Plaintiff is
25 informed and believes, and on that basis alleges, the damage to the cargo was
26 proximately caused by Defendants' wrongful acts. Plaintiff therefore sues these
27 Defendants by such fictitious names and Plaintiff will amend this complaint to
28 allege their true names and capacities when ascertained.

1 9. Plaintiff is informed and believes, and on that basis alleges, that each
2 of the Doe Defendants were at all times herein mentioned the agent, servant,
3 employee or contractor of the other Defendants.

4 10. On or about June 2, 2016, Defendants received a shipment of auto
5 parts ("Cargo") to be carried from Vung Tau, Vietnam to Los Angeles, California
6 in the same good order and condition as when received.

7 11. The Cargo moved under bill of lading OOCL2572731690 in container
8 OOLU0189015.

9 12. Defendants, and each of them, failed and neglected to carry, handle,
10 monitor and deliver the Cargo and maintain its good order and condition as when
11 received. To the contrary, on or about June 28, 2016, the Cargo was involved in a
12 domestic transit loss, was transloaded into Container OOLU431605 and later
13 delivered damaged in Chicago.

14 13. By reason of the foregoing, the subrogated insurer of owner of the
15 Cargo brought claim against NISSIN in the amount of \$125,742.47.

16 14. Plaintiff, NISSIN's liability insurer, mitigated the loss by settlement
17 of the claim for \$9,500.

18 15. Plaintiff, in turn, seeks reimbursement from Defendants for \$9,500,
19 plus interest and costs of suit.

20 **FIRST CAUSE OF ACTION AGAINST ALL DEFENDANTS**

21 **(Non-Delivery of Cargo)**

22 16. Plaintiff refers to paragraphs 1 through 15, inclusive, of this
23 Complaint and incorporates them herein as if fully set forth.

24 17. Defendants, and each of them, failed and neglected to discharge and
25 deliver the Cargo to its intended destinations in the same good order and condition
26 as when received. The Cargo was never delivered.

27 18. By reason of the foregoing, Plaintiff has been damaged in the amount
28 of \$9,500, plus miscellaneous expenses, interest and costs, no part of which has

1 been paid by Defendants.

2 **SECOND CAUSE OF ACTION AGAINST ALL DEFENDANTS**

3 **(Negligence)**

4 19. Plaintiff refers to paragraphs 1 through 18, inclusive, of this
5 Complaint and incorporates them herein as if fully set forth.

6 20. The loss and damage to the Cargo was directly and proximately
7 caused by the negligence and carelessness of Defendants and each of them.

8 21. As a direct and proximate result of the negligence and carelessness of
9 Defendants, Plaintiff has been damaged in the amount of \$9,500, plus
10 miscellaneous expenses, interest and costs, no part of which has been paid by
11 Defendants.

12 **THIRD CAUSE OF ACTION AGAINST ALL DEFENDANTS**

13 **(Breach of Contract)**

14 22. Plaintiff refers to paragraphs 1 through 21, inclusive, of this
15 complaint and incorporates them herein as though fully set forth.

16 23. Defendants, and each of them, agreed to safely handle, store, count,
17 transport, monitor and deliver the Cargo in the same good order and condition as
18 when received.

19 24. Defendants materially and substantially breached their agreement by
20 failing to deliver the Cargo in the same good order and condition as when received.
21 To the contrary, the Cargo was delivered damaged.

22 25. As a direct and proximate result of the material breach of contract by
23 Defendants, Plaintiff has been damaged in the amount of \$9,500, plus
24 miscellaneous expenses, interest and costs, no part of which has been paid by
25 Defendants.

26 **FOURTH CAUSE OF ACTION AGAINST ALL DEFENDANTS**

27 **(Declaratory Relief)**

28 26. There is currently an actual controversy and dispute among Plaintiff

1 and Defendant and BNSF Railway Company involving the rights and
2 responsibilities for a June 28, 2016 derailment in Texas and ensuing damage to the
3 Cargo resulted. Plaintiff and OOCL contend they are without fault, responsibility
4 or blame for any of the damages suffered by Plaintiff as more fully described in the
5 complaint of OOCL under case number 3:17-cv-02392-JFW-JEM, the allegations
6 of which are incorporated by reference.

7 27. Plaintiff is informed and believes that BNSF Railway contends
8 otherwise.

9 **PRAYER**

10 WHEREFORE, Plaintiff prays for judgment against Defendants, jointly and
11 severally, as follows:

12 1. For general damages in the sum of \$9,500, plus miscellaneous
13 expenses, interest and costs;

14 2. For costs of suit herein;

15 3. For a judicial determination that BNSF Railway is obliged to
16 indemnify and pay Plaintiff for the damages asserted herein and in OOCL's
17 complaint referred to above;

18 4. For such other and further relief as this court deems just and proper.
19

20 Dated: June 26, 2017

CAMMARANO LAW GROUP

21
22 By: /s/Dennis A. Cammarano
23 Dennis A. Cammarano
24 Attorneys for Plaintiff,
25 SOMPO JAPAN INSURANCE
26 COMPANY OF AMERICA
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